ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Vehicular Fuels

Proposed Amendments:	**N.J.A.C. 7:27-25.1, 25.2, 25.3, 25.4, 25.8, 25.9, 25.11 and 30.13 and N.J.A.C. 7:27A-3.10**
Proposed New Rule:	**N.J.A.C. 7:27-25.8, 25.9 and 25.10**
Proposed Repeals:	**N.J.A.C. 7:27-25.6, and 25.7**
Authorized by:	Robert C. Shinn Jr., Commissioner, Department of Environmental Protection.
Authority:	N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically 26:2C-8.
DEP Docket Number:	28-98-10/676
Proposal Number:	PRN 1998-

A **public hearing** concerning this proposal will be held at 10:00 A.M. on Friday, December 18, 1998, at:

First Floor Hearing Room
Department of Environmental Protection
401 East State Street
Trenton, New Jersey

Submit written comments by December 24, 1998 to:

Ann Zeloof, Esq.
Attention: DEP Docket No. 28-98-10/676
Office of Legal Affairs
Department of Environmental Protection
P.O. 402
Trenton, New Jersey 08625-0402

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The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing to establish additional requirements for gasoline sold in New Jersey which would result in lower emissions of the ozone precursors known as volatile organic compounds (VOCs) and oxides of nitrogen (NOx) as part of a new, two- phase low emission gasoline program. The Department is proposing this program in furtherance of the State's efforts to attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. Specifically, Phase I of this program will partially address the disapproval by the United States Environmental Protection Agency (EPA) of New Jersey's 15 percent rate of progress (ROP) plan. It will also serve as a transition to Phase II of this program, which will partially address the projected uncertainty in New Jersey's Phase 2 Ozone SIP, as to the extent to which (if any) the State will fail to achieve the one-hour NAAQS for ozone in the northern portion of the state by the year 2007, and the anticipated further emission reductions needed for attainment of the recently adopted eight-hour standard for ozone.

Phase I of the new low emission gasoline program and the disapproval of the 15 percent ROP plan:

The EPA concluded that the State will not be able to meet its timetable for reducing VOC emissions from 1990 levels in accordance with its 15 percent ROP plan based on delays in the start of New Jersey's enhanced inspection and maintenance (I/M) program. (See letter dated December 12, 1997, from EPA Deputy Regional Administrator William J. Muszynski to New Jersey Department of Environmental Protection Commissioner Robert C. Shinn, Jr. and New Jersey Department of Transportation Commissioner John J. Haley, Jr. See also 63 Fed. Reg. 45399, Notification of Final Rule regarding this disapproval of the 15 percent ROP plan.)

The EPA notified New Jersey by a December 12, 1997 letter that the conditional interim approval of the New Jersey 15 Percent ROP Plan, which it had previously granted and published as an interim final rule in the June 30, 1997 Federal Register (62 Fed Reg. 35100), had been converted to a full disapproval pursuant to section 110(k) of the Clean Air Act (the Act), 42 U.S.C. 7410(k). This conversion to a disapproval started a mandatory sanctions clock for the 15 Percent ROP Plan. Unless this clock is stopped, starting 18 months from December 12, 1997, that is, starting on or about June 12, 1999, increased emissions from new or modified major sources of VOCs and NOx must be offset at a rate of two tons of reduction for every one ton of increased emissions, pursuant to section 179(b)(2) of the Act, 42 U.S.C. 7509(b)(2). Starting six months thereafter, that is, on or about December 12, 1999, restrictions on New Jersey's receipt of Federal highway funds will also begin, pursuant to section 179(b)(1), 42 U.S.C. 7509(b)(1).

In addition, two Federal Implementation Plan (FIP) clocks began to run as a result of the EPA's December 12, 1997 notification. First, a statutory 24-month 15 Percent ROP Plan FIP clock began for the New Jersey portion of the New York-Northern New Jersey-Long Island ozone nonattainment area, pursuant to section 110(c) of the Act, 42 U.S.C. 7410(c). That is, unless this clock is stopped, the EPA must adopt a Federal 15 percent ROP plan by December 12, 1999. Secondly, pursuant to a consent decree entered on March 26, 1997 in American Lung Association

of Northern Virginia, et al. v. Carol M. Browner, Civ. No. 1:96CV01388, in the United States District Court for the District of Columbia, an expedited 15 Percent ROP Plan FIP clock began to run for the New Jersey portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. This clock requires that the EPA propose a 15 Percent ROP Plan FIP by January 15, 1999 and adopt it by August 15, 1999. In order to stop the sanctions and the FIP clocks, New Jersey must submit a new 15 Percent ROP Plan SIP and the EPA must take rulemaking approval action on the submittal.

The VOC emission standards proposed herein for Phase I of New Jersey's new low emission fuel program are intended to assure steady, continuing emission reductions and ozone concentration reduction progress, which is the purpose of the statutory ROP requirements. That is, they will both partially address the ozone emission reduction shortfall which resulted in the EPA disapproval of New Jersey's ROP Plan as well as serve as a transition to Phase II of New Jersey's new low emission gasoline program, which in turn will address other air quality needs of the State, as discussed below. As is also discussed below, the proposed Phase I low emission gasoline NOx emission standards are intended to partially address ozone NAAQS attainment uncertainties raised by the Department's Phase II Ozone SIP, and the anticipated further emission reductions needed for attainment of the recently adopted eight-hour standard for ozone.

Phase II of the new low emission gasoline program and the attainment uncertainty in New Jersey's Phase II Ozone SIP:

As required by the Clean Air Act, New Jersey recently made a demonstration to the EPA that its SIP will result in the attainment of the one-hour NAAQS for ozone within the time frame required by the Clean Air Act. (See New Jersey's Phase II Ozone SIP Submittal, dated August 31, 1998.) New Jersey is required to make such a demonstration for eighteen of its twenty-one counties. These counties are associated with two multi-state nonattainment areas; the Philadelphia-Wilmington-Trenton nonattainment area and the New York-Northern New Jersey-Long Island nonattainment area. The Clean Air Act required the demonstration to be submitted to the EPA by November 15, 1994. Recognizing the problems the states were having in meeting this requirement, the EPA administratively created a two-phased approach. In Phase I, the states were required to develop their rate of progress plans through 1999 and participate in a consultative process to address the transport of ozone throughout the eastern United States. Upon completion of Phase I, the states were to submit their Phase II submittal, which for New Jersey includes an attainment demonstration, current air quality measurements and modeled projections of air quality benefits used to project the ozone levels in the required attainment year.

For the Philadelphia, Southern and Central New Jersey region, an area which includes the Philadelphia-Wilmington-Trenton nonattainment area, the results indicate that with further and full implementation of the measures mandated by the Clean Air Act and with a broad Regional NOx Emission Reduction cap similar to or more stringent than the one recently proposed by the EPA, attainment with the one-hour standard by 2005 is a reasonable expectation. With respect to the New York, Northern New Jersey, Southern Connecticut region, an area which includes the New York-Northern New Jersey-Long Island nonattainment area, the results indicate that substantial reductions in ozone concentrations will be achieved through further implementation of Clean Air Act measures and a Regional NO_x Cap Program similar to what the EPA has proposed. Using 1998 air quality data

as the starting point, projections of future ozone air quality levels indicate this nonattainment area will reach attainment from the implementation of the Clean Air Act measures and the Regional NOx cap. However, variations in recent air quality measurements at key sites and other direct modeling results introduce uncertainty in the above projection. An analysis of that uncertainty indicates that additional VOC or NO_x emission reductions, on the order of zero to 12 percent, may be needed for attainment. Based on this uncertainty, the State committed, in its Phase II Ozone SIP, to evaluate control strategies and measures to achieve this level of emission reduction. One such control strategy is a NOx emission standard for gasoline sold in New Jersey that is more stringent than that currently provided by Federal gasoline formulation requirements. In addition, the analysis in the Phase II Ozone SIP indicates that further emission reductions, beyond the Clean Air Act-mandated measures and the EPA NOX cap will be needed to attain the new eight-hour ozone standard.

By including a NOx emission performance reduction standard for both Phase I and Phase II of the State's new low emission gasoline program, the Department should be able to partially address the possible VOC or NOx emissions reductions shortfall, as well as move toward attainment of the eight-hour standard.

Changes to the current New Jersey fuel rule:

N.J.A.C. 7:27-25 (Subchapter 25) establishes requirements for the control and prohibition of air pollution by vehicular fuels, including standards for the oxygenation and volatility of gasoline. Gasoline sold in New Jersey is also subject to the Federal requirements for reformulated gasoline (RFG) promulgated by the EPA at 40 C.F.R. Part 80. The proposed new low emission gasoline requirements would be in effect during the summertime volatility control period referred to in Subchapter 25 and otherwise known as the ozone season. The ozone season runs from May 1 through September 15. The proposed amendments require gasoline sold in New Jersey during the ozone season, beginning in 1999, to meet a volatility standard which is more stringent than the current volatility standard set forth in Subchapter 25. In addition, gasoline sold in New Jersey during the ozone season, beginning in 1999, must meet a VOC emission performance reduction standard which is more stringent than both the RFG Phase I (otherwise known as "RFG 1") and Phase II (or "RFG 2") standards set forth at 40 C.F.R. Part 80, subpart D. They would also require gasoline sold in New Jersey during the ozone season in the years 1999 - 2002, inclusive, to meet a NOx emission standard more stringent than both the RFG 1 and RFG 2 NOx emission standards that would otherwise be in effect during those years. Finally, they would require gasoline sold in New Jersey during the ozone season beginning in the year 2003 to meet an even more stringent NOx emission standard. The NOx emission standard for Phase I of the low emission gasoline program is already more stringent than the RFG 1 standards, as stated above. These proposed State standards are in addition to the applicable RFG 1 and RFG 2 standards with which all gasoline sold in New Jersey must still comply.

The VOC emission standard:

During the ozone seasons of 1999 through 2002, inclusive (or "Phase I of New Jersey's low emission gasoline program"), gasoline produced for sale in New Jersey would be required to meet one of two per-gallon VOC emission standards - either a volatility standard measured as a Reid

Vapor Pressure (RVP) of 7.5 pounds per square inch (psi) or an equivalent VOC emission performance reduction standard of 28.4 percent. RVP is a measure of a fuel's volatility. It reflects both the rate at which gasoline evaporates and the rate of VOC emissions as fuel vapor pressure is directly proportional to the rate of evaporation. Hence, the lower the RVP, the lower the rate of evaporation and, consequently, the lower the level of VOC emissions. RVP restrictions during the summer months can help offset the increased volatility of gasoline caused by summer temperatures. This in turn would lower VOC emissions from gasoline. VOC emissions are an important component in the production of ground level ozone during the hot summer months. Thus, further restricting the allowable RVP, or alternatively, restricting the equivalent level of allowable VOC emissions, of gasoline sold within New Jersey will advance the State's effort to attain and maintain compliance with the NAAQS for ozone.

The VOC emission performance reduction standard is based on the baseline gasoline which is used to determine compliance with RFG 1 requirements. As is reflected in Table I, below, these standards are more stringent than both the RFG 1 requirements currently in effect for gasoline sold in New Jersey and the RFG 2 requirements, which are effective January 1, 2000. Furthermore, during Phase II of New Jersey's low emission gasoline program, which begins with the ozone season of the year 2003, gasoline sold in New Jersey will continue to be required to meet a VOC emission performance reduction standard of 28.4 percent, but will no longer have the gasoline volatility compliance alternative. Again, this Phase II VOC emission performance reduction standard is more stringent that the RFG 2 VOC emission performance reduction standard which would otherwise be in effect at that time. This lower VOC emission standard is a result of modeling otherwise required RFG 2 with the additional New Jersey-specific lower NOx emission performance reduction standard, as is discussed below.

The NOx emission standard:

During Phase I of New Jersey's low emission gasoline program, that is, during the 1999 through 2002 ozone seasons, inclusive, gasoline produced for sale in New Jersey would be required to meet a per-gallon NOx emission performance reduction standard of 8.6 percent. This standard was derived from modeling RFG 1 with an RVP of 7.5 psi and a sulphur content of 134 parts per million (ppm). This reflects the sulphur content the petroleum industry has indicated it expects to meet in order to comply with RFG 2 NOx standards. The NOx emission performance reduction standard is, like the VOC emission performance reduction standard, based on the baseline gasoline which is used to determine compliance with RFG 1 requirements. This NOx standard is more stringent than both the RFG 1 NOx requirements currently in effect for gasoline sold in New Jersey and the RFG 2 requirements, which are effective January 1, 2000. Beginning with the ozone season of the year 2003 (and continuing thereafter), gasoline sold in New Jersey will be required to meet an even more stringent NOx emission performance reduction standard of 11.0 percent. This is more stringent that the NOx emission performance reduction standard which would otherwise be in effect at that time. This standard was derived from further limiting then-existing RFG 2 with a maximum per gallon sulphur content of 40 ppm.

Low sulphur gasoline has recently become the subject of serious consideration and analysis in this country and abroad due to its well-recognized role in reducing emissions of VOC and NOx

from motor vehicles. (See EPA Staff Paper on Sulphur in Fuels, issued May 1, 1998. These studies reveal the positive effects of gasoline with reduced sulphur levels in both existing and future, advanced technology vehicles. Gasoline where the level of sulphur, for example, is kept below 150 ppm reduces the level of NOx by about 5.0 percent for a normally emitting Tier 0 (current fleet) vehicle when compared to gasoline with the currently sold sulphur levels of 350 ppm. Where the level of sulphur is kept below 40 ppm, as is currently required of gasoline sold in California, such gasoline reduces the level of NOx by about 11.0 percent for a normally emitting Tier 0 (current fleet) vehicle. The use of gasoline with sulphur content below the currently available level also produces, but to a lesser extent, reductions in VOC emissions. Furthermore, studies now suggest that even a short-term use of higher sulphur content gasoline can "poison" the emission control system, that is, reduce its effectiveness in reducing emissions even after the vehicle is switched to a low sulphur gasoline. There are suggestions that the poisoning effect of the high sulphur gasoline are not, in fact, readily reversed. In recognition of the emission-reducing benefits of gasoline with lowered sulphur content, as well as the "poisoning" effect of higher levels of sulphur in gasoline when used in cars with current and up-coming emission control technologies, automobile manufacturers, the petroleum industry, environmental groups and states with air pollution concerns, have come together to seek the promulgation by the EPA of more stringent sulphur limits for gasoline than are currently in effect in this country. While there is not yet consensus as to the appropriate standard, it is generally agreed that a maximum per gallon standard would be in the range of 40 ppm to 150 ppm.

TABLE I
Federal RFG Program

		VOC **% emission reduction**	**NOx** **% emission reduction**
RFG 1 ***('97 - 99)***	**Averaged Standards**	std. ≥17.1 per gallon min. ≥13.1	std. ≥1.5 per gallon min.≤–2.5
	Per Gallon Standards	std.≥15.6	std.≥0 (no NOx increase requirement)
RFG 2 (2000+)	**Averaged Standards**	std.≥27.4 per gallon min.≥23.4	std.≥6.8 per gallon min.≥3.0
	Per Gallon Standards	std.≥25.9	std.≥5.5

Proposed New Jersey Low Emission Gasoline Program

	VOC	NOx
Phase I - 1999 - 2002 Compliance - per gallon; allows use of open market emission trading	RVP ≤7.5 psi or equivalent 28.4% emission reduction	8.6% emission reduction [1]
Phase II - 2003 Compliance - per gallon; allows use of open market emission trading	28.4% emission reduction [2] NOTE: exceeds RFG 2 standard of 25.9%	11% emission reduction [3]

Note: All reductions are expressed from the national baseline RFG gasoline, as prescribed in the Federal RFG rule.

This rulemaking does not affect the wintertime gasoline oxygenation requirements set forth at N.J.A.C. 7:27-25.3, nor do the proposed standards modify other RFG requirements which currently apply to gasoline sold in the New Jersey or will apply to such gasoline sold in the future. That is, 40 C.F.R. Part 80 does contain certain other RFG requirements such as the year-round 2.0 percent, averaged, oxygenation requirement which will continue in effect. This also means that this proposal does not include more stringent standards for the other RFG parameters, such as limits on toxics and benzine.

The proposed low emission gasoline standards will replace those provisions in Subchapter 25 governing the volatility (expressed as RVP) of gasoline. The RVP program was originally established in 1989 as part of the State's efforts to control ground level ozone pollution by regulating the vapor pressure of gasoline. The State's RVP standard currently requires that the RVP of gasoline sold in New Jersey from June 1 through September 15 of each year shall not exceed 9.0 pounds per square inch (psi). Because New Jersey's RVP standard of 9.0 psi is less stringent than both the specified RVP standard and the VOC emissions reductions performance standards proposed herein, the Department has determined that these volatility provisions no longer serve any meaningful purpose and are proposed for repeal.

Non-identical gasoline requirements waiver:

Because the Department is proposing fuel requirements that are not identical to those established by the EPA at 40 C.F.R. Part 80, the State has prepared a proposed revision to its ozone State Implementation Plan (SIP) which includes an application to the EPA for a waiver of the prohibition against the promulgation of non-identical gasoline formulation requirements, set forth at section 211(c)(4)(A) of the Clean Air Act (CAA). As provided in section 211(c)(4)(C), the application for this waiver is based on a showing that these non-identical fuel requirements are

[1] Modeled using Region 2 RFG 1 with an RVP of 7.5 psi and sulphur at 134 ppm.

[2] Modeled using Region 2 RFG 2 with an RVP of 6.7 psi and sulphur at 40 ppm.

[3] Essentially equivalent to an average sulfur content of 40 ppm.

necessary for the State to achieve the NAAQS for ozone. Specifically, the State has determined that the additional emission reduction benefits that these new low emission gasoline standards would generate will be necessary to (1) meet the new eight-hour NAAQS for ozone and (2) address in part the uncertainty in attaining the one-hour NAAQS. A copy of the proposed SIP revision is available from the Department's Office of Air Quality Management at the following address:

N.J. Department of Environmental Protection
Office of Air Quality Management, Rule Development Section
401 East State Street
P.O. Box 418
Trenton, N.J. 08625-0418

or by calling (609) 292-6722. This document will also be available from Air Quality Management's website at **www.state.nj.us/dep/aqm.**

Open market trading option:

In order to provide greater flexibility to the importers, refiners, and blenders who will be required to comply with these new formulation requirements, the Department is proposing to include a trading component in these rules that would allow for compliance through the use of discrete emission reduction (DER) credits, under the Open Market Emissions Trading (OMET) rule. In this way, fuel providers will be able to generate and use credits as part of this low emission gasoline program.

Revisions to N.J.A.C. 7:27-25

The proposed revisions to N.J.A.C. 7:27-25 are described below:

N.J.A.C. 7:27-25.1 Definitions. In order to reflect changes proposed to Subchapter 25, the Department has, at N.J.A.C. 7:27-25.1(a):

Amended the definitions of the terms "gasoline," "importer," and "refinery" to conform with the definitions of these terms in the EPA's RFG rule at 40 C.F.R. 80.2.;

Amended the definition of the term "control period" to delete references to the RVP standards;

Amended the definition of the term "non-conforming gasoline" to refer to gasoline which does not satisfy the new standards proposed at N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g) as well as gasoline which does not meet the oxygenated fuel standards at N.J.A.C. 7:27-25.3(a);

Added definitions of the terms "RFG" or "Federal reformulated gasoline," "RFG 1" and "RFG 2" as reference is made to these fuels in the amended rules;

Added a definition for the term "ozone season" to designate the time frame during which the proposed new low emission gasoline standards apply and within which low emission gasoline DER credits must have been generated in order to be used to comply with these new standards;

Deleted the definition of the term "RVP control period" since it is no longer applicable; and

Incorporated by reference, at N.J.A.C. 7:27-25.1(b), the definition of any additional terms used in those portions of 40 C.F.R. Part 80 which are referenced in Subchapter 25.

N.J.A.C. 7:27-25.2 Scope and applicability

The Department has proposed amendments to N.J.A.C. 7:27-25.2(b) and (c) which clarify that the provisions of Subchapter 25 and 40 C.F.R. Part 80 apply to refiners, importers, blenders, distributors, wholesale purchaser-consumers and retailers of gasoline in New Jersey, with the exception of those proposed new provisions of Subchapter 25 relating to the summertime low emission gasoline program which apply only to refiners, importers, blenders and distributors of gasoline who sell or otherwise provide gasoline to retailers and wholesale purchaser-consumers in New Jersey. The Department is also proposing at subsection (d) a provision that the Department will investigate the incremental cost relative to the air quality benefits of the proposed Phase II standards. Based on its investigation and other relevant information, the Department will either reaffirm the appropriateness of the standards and the timing of their effective date by notice in the New Jersey Register, or the Department will consider modifying the standards or their effective date. In the latter case, the Department will seek comment from the public and the EPA, which may result in the modification of the standards through rulemaking.

N.J.A.C. 7:27-25.3 Oxygen content standards: general provisions

The Department has changed the heading of this section to clarify that it now relates only to oxygenated gasoline. In addition, the Department has deleted the provisions at N.J.A.C. 7:27-25.3(a), (b) and (h) which relate to a summertime volatility standard which is no longer meaningful in ensuring the use of low emission gasoline in this State, as explained above. The provisions at N.J.A.C. 7:27-25.3(c), (e), (f) and (g) relate only to the wintertime oxygenated fuels program and were retained, but recodified, with no, or only stylistic changes, at N.J.A.C. 7:27-25.3(a) through (d). The Department has deleted as no longer meaningful N.J.A.C. 7:27-25.3(d), which does no more than refer to the start date of the wintertime oxygenated fuels program in 1992.

N.J.A.C. 7:27-25.4 Oxygen content standards: recordkeeping and compliance determinations

N.J.A.C. 7:27-25.4 currently contains requirements for gasoline testing, recordkeeping, and sampling for both the wintertime oxygenated fuels program and the defunct summertime RVP control program. The Department proposes to change the heading of this section and to remove all references to the current RVP program, including the deletion of the provisions at N.J.A.C. 7:27-25.4(c)1 and (d) so that N.J.A.C. 7:27-25.4 will contain requirements which apply only to the continuing wintertime oxygenated fuels program. N.J.A.C. 7:27-25.4(e) through (h) would be recodified as N.J.A.C. 7:27-25.4(d) through (g). In addition, a correction has been made to N.J.A.C. 7:27-25.4(h), recodified at

N.J.A.C. 7:27-25.4(g) to correct a reference to application certification provisions formerly promulgated at N.J.A.C. 7:27-8.24 to N.J.A.C. 7:27-1.39.

N.J.A.C. 7:27-25.6 Petition for rulemaking in the case of imminent supply shortage

Because the provisions of N.J.A.C. 7:27-25.6 will no longer be relevant if the current RVP standard of 9.0 psi is repealed as proposed, the Department proposes to repeal this section. N.J.A.C. 7:27-25.6 currently provides a mechanism whereby a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer who determines that the requirement of supplying 9.0 psi RVP gasoline during the RVP control period will cause an imminent shortage of gasoline can request the Department to modify the 9.0 psi RVP standard to avert any such shortage in gasoline supply.

N.J.A.C. 7:27-25.7 Exemptions

The Department proposes to repeal the provisions at N.J.A.C. 7:27-25.7 as having outlived their usefulness. In the infancy of the State's gasoline volatility and oxygenation programs, it was felt necessary to provide exemptions for the use of non-conforming gasoline in research, product development and trial use. The Department no longer sees a need for such exemptions.

N.J.A.C. 7:27-25.8 Oxygen content standards: labeling

The Department proposes recodifying this section as N.J.A.C. 7:27-25.6, and changing its heading to clarify that it contains labeling requirements which apply only to oxygenated gasoline.

N.J.A.C. 7:27-25.9 Oxygen content standards: variance for shortage of supply

The Department proposes recodifying this section as N.J.A.C. 7:27-25.7, and changing its heading to clarify that it contains variance provisions which apply only to oxygenated gasoline.

N.J.A.C. 7:27-25.8 Low emission gasoline standards: General provisions

The Department proposes to add a new section which establishes the new summertime requirements pertaining to VOC and NOx emissions from gasoline. As explained above, these requirements are in addition to the RFG 1 requirements at 40 C.F.R. 80.41 currently in effect in New Jersey. The Federal RFG provisions at 40 C.F.R. 80.41 establish standards and other requirements for gasoline, and it is those Federal provisions that otherwise apply. The Federal provisions, for example, also establish emission reduction requirements for toxics, content requirements for oxygenates and benzene, and a prohibition against the inclusion of any heavy metals, none of which are addressed in this section. The proposed new low emission gasoline standards do not in any way impose more stringent standards regarding toxics, oxygenates or benzene than are contained in the Federal RFG rule. The Department proposes clarifying language to this effect at N.J.A.C. 7:27-25.8(a).

N.J.A.C. 7:27-25.8(b) clarifies that these low emission gasoline standards apply only to refiners, importers, blenders, and distributors, who provide gasoline to retailers and wholesale purchaser-consumers located in New Jersey.

The standards themselves are set forth at N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g). The Department refers to all these standards generically as low emission gasoline standards.

The Department refers to both the volatility and VOC emission performance reduction standards set forth at N.J.A.C. 7:27-25.8(c) and (d) as VOC emission standards; while gasoline volatility, as measured by RVP, does not, strictly speaking, reflect the fuel's VOC emission level, it does provide an equivalency to a VOC emission level, which satisfies the purposes of this rulemaking. Accordingly, for Phase I, the Department is proposing a volatility standard, measured as RVP, of 7.5 psi, and a VOC emission performance reduction standard of 28.4 percent. Gasoline meeting either of these standards should result in significant emission reduction benefits when sold and used in New Jersey in the 1999 ozone season, when compared to the RFG 1 standards which would otherwise be in effect at that time. During the inception of Phase I of the RFG program, that is, during the 1995, 1996 and 1997 ozone seasons, fuel providers had the option of complying with a "simple model" for New Jersey fuel formulation which included a per gallon RVP standard of 8.1 psi, and an averaged RVP standard of 8.0 psi. During this 1998 ozone season, and henceforth, fuel providers can no longer use this simple model, and must instead meet a VOC emission performance reduction standard, which for RFG 1 is 15.6 percent (per gallon) or 17.1 percent (averaged). This VOC emission performance reduction standard reflects a comparison to a baseline 1990 gasoline through the use of the "complex model" developed for this purpose by the EPA and set forth at 40 C.F.R. 80.45. It appears that the EPA promulgated the Phase I per gallon RVP standard of 8.1 as a volatility standard which it believed to be equivalent to the per gallon VOC emission performance reduction standard of 15.6 percent. The Department believes, based upon data generated by the complex model regarding currently available gasoline, that a per gallon RVP standard of 7.5 psi is similarly equivalent to a per gallon VOC emission performance reduction standard of 28.4 percent. The Department does, however, welcome comment and the submission of analyses supporting this equivalency or the use of other values as equivalent to either standard proposed herein.

The Department is proposing the Phase I standards as alternative options to fuel providers. The first option, set forth at N.J.A.C. 7:27-25.8(c)1, is the Phase I VOC emission performance reduction standard; the second option, set forth at N.J.A.C. 7:27-25.8(c)2, is the Phase I RVP standard. The second option contains an additional provision which is intended to prevent the unintended result of a gasoline which meets the volatility standard but, because of a concomitant raising of the levels of other fuel parameters, does not result in an emission reduction benefit. That is, the fuel, while otherwise compliant with the standard, could produce even more VOC emissions than the fuel that was produced by the refiner, importer or blender during the 1998 ozone season. This result will be prevented by requiring the VOC emission performance reduction of the gasoline to be at least as great as the average VOC emission performance reduction of the gasoline produced or provided by the refiner, importer or blender during the 1998 ozone season.

The Department is also proposing at N.J.A.C. 7:27-25.8(e) a Phase I ozone season NOx emission performance reduction standard of 8.6 percent. This per gallon standard is more stringent

than both the RFG 1 and RFG 2 NOx emission standards that would otherwise be in effect at that time.

For Phase II of the New Jersey new gasoline program, the Department is proposing at N.J.A.C. 7:27-25.8(d) to continue with the VOC emission performance reduction standard of 28.4 percent; unlike Phase I of the program, Phase II does not provide fuel providers the option of complying with an equivalent volatility standard. Phase II also includes a NOx emission performance reduction standard of 11.1 percent at N.J.A.C. 7:27-25.8(f). This per gallon standard is even more stringent than that provided for Phase I.

Finally, the Department proposes, at N.J.A.C. 7:27-25.8(g), a Phase II per gallon sulphur cap of 80 parts per million (ppm). This is to ensure that the flexibility provided through the use of open market trading to satisfy the Phase II NOx requirements does not allow the unintended result of unacceptably high levels of sulphur in this regulated gasoline.

N.J.A.C. 7:27-25.9 Low emission gasoline standards: recordkeeping and compliance determinations

The Department proposes a new section at N.J.A.C. 7:27-25.9 which enumerates recordkeeping and compliance determination requirements which apply to all refiners, importers, blenders refining, importing, blending gasoline that is subject to the new low emission gasoline requirements set forth at N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g). N.J.A.C. 7:27-25.9(a)1 incorporates by reference the RFG recordkeeping requirements set forth at 40 C.F.R. 80.74, to which these refiners, importers, blenders are already subject; N.J.A.C. 7:27-25.9(a)2 adds a requirement that they deliver to the Department, upon request, copies of all records containing the information required in 40 C.F.R. 80.74.

N.J.A.C. 7:27-25.9(a)3 requires importers, refiners, and blenders to comply with the RFG reporting requirements set forth at 40 C.F.R. 80.75, to which these importers, refiners, and blenders are already subject and to provide the Department, by the last day of February of each year, a copy of the reports and statements required pursuant to 40 C.F.R. 80.75(l). Specifically, these are a report of the volume of each RFG produced or imported during the previous calendar year for which compliance is achieved on a per gallon basis and a statement that each gallon met the applicable RFG standards.

N.J.A.C. 7:27-25.9(a)4 requires importers, refiners, and blenders to conduct the program of RFG compliance surveys which they are already required to do pursuant to 40 C.F.R. 80.68, and adds the requirement that they ensure that copies of all surveys are submitted to the Department at such time as these surveys are submitted to the EPA. This will provide critical feedback to the Department regarding the level of compliance downstream at the retail level and will aid in the Department's enforcement of these new low emission gasoline standards.

N.J.A.C. 7:27-25.9(a)5 requires importers, refiners, and blenders to make available to the Department such other information as it may require. This requirement parallels a similar provision

at 40 C.F.R. 80.75, whereby importers, refiners, and blenders must make such information available to the EPA.

N.J.A.C. 7:27-25.9(b) requires distributors to maintain records to show compliance with N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g).

At N.J.A.C. 7:27-25.9(c), the Department proposes the methods to be used to determine compliance with the new low emission gasoline standards set forth at N.J.A.C. 7:27-25.8(c), (d), (e), and (f). Compliance with N.J.A.C. 7:27-25.8(c)1 and (d), (e), and (f) is determined by using the RFG Complex Model set forth at 40 C.F.R. 80.45; compliance with N.J.A.C. 7:27-25.8(c)2 is determined by sampling the gasoline using one of the two methods set forth at N.J.A.C. 7:27-25.9(d)1 and testing the gasoline to determine its RVP using one of the two methods set forth at N.J.A.C. 7:27-25.9(d)2. Use of the RFG Complex Method to determine compliance with the Department's proposed Phase I and Phase II VOC and NOx emission performance reduction standards is consistent with the use of this model to determine compliance with the RFG VOC and NOx emission performance reduction standards already required of those refiners, importers and blenders providing gasoline to distributors, wholesale purchaser-consumers and retailers for sale in New Jersey. Similarly, the Department has proposed, as the sampling and testing methods to be used in determining compliance with the Phase I RVP standard, methods already contained in this subchapter for sampling and testing gasoline under the RVP program which the Department proposes repealing. The proposed testing methods, however, do not include Methods 1 and 2 formerly promulgated at 40 C.F.R. Part 80 Appendix E, as these methods have been repealed by the EPA and are no longer acceptable for use in testing the RVP of gasoline subject to the requirements of 40 C.F.R. Part 80.

Finally, at N.J.A.C. 7:27-25.9(e) the Department proposes that reports and information required or requested under this section be submitted to the Department's Bureau of Transportation Control and provides the Bureau's address.

New section: <u>N.J.A.C. 7:27-25.10</u> <u>Low emission gasoline standards: Use of credits for compliance</u>

The Department is proposing a compliance mechanism at N.J.A.C. 7:27-25.10 whereby a person subject to the low emission gasoline standards set forth at N.J.A.C. 7:27-25.8 who fails to comply with these standards can compensate for any shortfall through the use of discrete emission reduction (DER) credits through the Open Market Emissions Trading (OMET) program, the rules for which are set forth at N.J.A.C. 7:27-30. Generally speaking, the provisions proposed at N.J.A.C. 7:27-25.10 refer to the OMET rules at Subchapter 30, and, as appropriate, tailor those provisions to fit the special needs of the low emission gasoline requirements by exempting the credit user from certain OMET requirements and adding certain other requirements that are specific to the fuel industry and this particular fuel program.

N.J.A.C. 7:27-25.10(a) provides that DER credits can be used in this fashion, so long as the generation and use of the DER credits comply with the provisions of the OMET rules and N.J.A.C. 7:27-25.10.

N.J.A.C. 7:27-25.10(b) provides that such use of DER credits must be preceded by the timely submittal of a Notice of Intent to Use DER Credits as prescribed by the OMET rules at N.J.A.C. 7:27-30.14; late submittal will result in the imposition of a surcharge as provided by the OMET rules at N.J.A.C. 7:27-30.11(e).

N.J.A.C. 7:27-25.10(c) provides that other OMET rules requirements must be met, specifically the notice requirements set forth at N.J.A.C. 7:27-30.14, 16 and 20.

N.J.A.C. 7:27-25.10(d) exempts a Notice of Intent to Use DER Credits submitted pursuant to this subchapter from a number of OMET rule provisions which require a credit user to give information about the credits to be used and about the quantification of the number of the credits that will be needed. Instead, N.J.A.C. 7:27-25.10(d) requires the credit user to provide an estimate of the maximum number of DER credits to be used during the use period. If more credits are needed during the use period, the credit user would amend the estimate in the Notice, in accordance with N.J.A.C. 7:27-30.14(c), prior to the date the maximum number is exceeded. If the credit user does not submit this amendment at least 30 days before the maximum number is exceeded, N.J.A.C. 7:27-25.10(d) provides for the application of the surcharge for late submittals set forth at N.J.A.C. 7:27-30.11(e).

N.J.A.C. 7:27-25.10(e) provides that the final date of the use period required by N.J.A.C. 7:27-30.16(c)2 to be established in the Notice of Intent to Use DER Credits will be December 31.

N.J.A.C. 7:27-25.10(f) incorporates the requirement at N.J.A.C. 7:27-30.16(c)3 that the credit user include with the Notice of Intent to Use DER Credits the emission quantification protocol to be used to calculate the number of credits that are needed for compliance, and requires further that the protocol satisfy the requirements of N.J.A.C. 7:27-30.20. The Department anticipates developing an emissions quantification protocol designed for this program within the next several months. N.J.A.C. 7:27-25.10(f) provides further that a credit user will have the option of using this protocol after it has been published in the New Jersey Register. In the alternative, the credit user can use a protocol approved by the Department.

N.J.A.C. 7:27-25.10(g) provides that a credit user need not hold the DERs needed for compliance until the date the Notice and Certification of DER Use is submitted. In this way the Department is again tailoring the OMET requirements to fit the special circumstances of this program.

N.J.A.C. 7:27-25.10(h) provides that the DER credits in Phases I and II of this program shall be based on emission reductions that occurred during the 1998 or later ozone seasons.

N.J.A.C. 7:27-25.10(i) provides that the Notice and Certification of DER Use is due 30 days after December 31; that is, by January 30 of the following calendar year.

N.J.A.C. 7:27-25.10(j) requires the credit user to provide, in the Notice and Certification of DER Use, information required at N.J.A.C. 7:27-30.15 and 16, and enumerates, at paragraphs (j)1 through 8, additional information to be provided.

N.J.A.C. 7:27-25.10 Owner and operator responsibility

N.J.A.C. 7:27-25.10 is recodified at N.J.A.C. 7:27-25.11.

N.J.A.C. 7:27-25.11 Oxygen content standards: service fees

The Department proposes recodifying N.J.A.C. 7:27-25.11 as N.J.A.C. 7:27-25.12, and changing its heading to clarify that it contains service fees requirements which apply only to oxygenated gasoline. The Department also proposes deleting N.J.A.C. 7:27-25.11(a) and (b) as they relate only to the provisions at N.J.A.C. 7:27-25.7 regarding exemptions which the Department has proposed repealing. Accordingly, N.J.A.C. 7:27-25.11(c) and (d) would be recodified as N.J.A.C. 7:27-25.12(a) and (b).

N.J.A.C. 7:27-30.13 DER use: required, authorized and prohibited uses

The Department proposes adding a provision at N.J.A.C. 7:27-30.13(b)6 that permits the use of DER credits to comply with the new low emission gasoline requirements at N.J.A.C. 7:27-25.8(c), (d), (e) and (f). Similarly, the Department proposes deleting the reference to the RVP standard at N.J.A.C. 7:27-30.13(d)5, both to remove reference to the old RVP standard and to avoid precluding use of DER credits to comply with the new VOC emission standard where the refiner, importer or blender has chosen the optional new RVP standard.

Revisions to N.J.A.C. 7:27A-3.10(m)

N.J.A.C. 7:27A-3.10(m) contains the civil administrative penalty schedule for N.J.A.C. 7:27. The penalty provisions relating to N.J.A.C. 7:27-25 are set forth at N.J.A.C. 7:27A-3.10(m)25. The Department proposes to delete penalties for violations of those sections deleted by this proposal; that is, N.J.A.C. 7:27-25.3(a) and (b); and 25.7(g) and (h). References in the penalty table to sections which would be recodified by this proposal are recodified accordingly, that is:

N.J.A.C. 7:27-25.3(c) is recodified as N.J.A.C. 7:27-25.3(a);

N.J.A.C. 7:27-25.8 is recodified as N.J.A.C. 7:27-25.6;

N.J.A.C. 7:27-25.9(i)is recodified as N.J.A.C. 7:27-25.7(i);

N.J.A.C. 7:27-25.9(k)2 is recodified as N.J.A.C. 7:27-25.7(k)2;

N.J.A.C. 7:27-25.9(*l*)1 through 5 are recodified as N.J.A.C. 7:27-25.7(*l*)1through 5.

Similarly, the Department proposes to add penalties for violations of the proposed new provisions at N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g), and 25.9(a)2, 3, 4, and 5. The penalties proposed for these violations are commensurate with the Department's existing penalties for similar fuel formulation violations.

Social Impact

Requiring gasoline sold in New Jersey to meet more stringent VOC and NOx emissions standards than it currently does will have a positive social impact. As discussed above in the Summary, this fuel will burn cleaner, that is, it will produce lower levels of VOCs and NOx. This will aid the State in its efforts to achieve and maintain the NAAQS for ozone and will make the air in New Jersey more healthful than would be possible without these new standards.

Although manufacturers of motor vehicles and fuel refiners have progressively reduced the emissions of air contaminants from motor vehicles, gasoline-fueled vehicles continue to contribute to New Jersey's air approximately 27 percent of the VOCs and 38 percent of the NOx emissions (both of which contribute to the formation of ambient ozone). These amendments will affect all New Jersey residents in some fashion, but, overall they will benefit the residents of New Jersey by providing them with cleaner air and thus a healthier environment.

VOCs participate in photochemical reactions with NO_x to create ozone and other oxidants harmful to health. Ground level ozone is a major public health problem in New Jersey. Studies have proven that ozone has severe and debilitating effects on lung capacity and can have detrimental effects on respiration. A series of EPA studies indicate that ozone exposures as low as 0.08 ppm, which is the recently promulgated new NAAQS, can impair lung function. Even at low levels, ozone can cause average humans to experience breathing difficulty, chest pains, coughing and irritation to the nose, throat and eyes. For individuals who already experience respiratory problems or who are predisposed to respiratory ailments, these symptoms can become much more severe, forcing those individuals to alter their lifestyles to avoid unnecessary exposure. Some VOCs, including benzene, formaldehyde and 1,3-butadiene, are classified as air toxics. They have been associated with the onset of cancer and other adverse health effects. NOx cause irritation to the lungs, lower resistance to respiratory infections, and contribute to the development of emphysema, bronchitis, and pneumonia. NO_x also react chemically in the air to form nitric acid, which contributes to acid rain formation.

In addition, chronic ozone exposure studies performed on laboratory animals indicate that long-term exposure to ozone affects lung physiology and morphology. These studies suggest that humans exposed to ozone over prolonged periods of time can experience chronic respiratory injuries resulting in premature or accelerated aging of human lung tissue.

The implications of these studies are quite serious considering the fact that in 1997, New Jersey's air was categorized as "unhealthy" on 36 days under the new NAAQS which uses a standard of an eight-hour average of 0.08 ppm. As of October 14 of this year, the NAAQS was exceeded on 47 days. It is clear, therefore, that the ozone levels in New Jersey must be reduced in order to protect the health and welfare of the residents of the State.

Economic Impact

The Department anticipates that refiners, importers, blenders, and distributors subject to the proposed VOC, NOx and sulphur requirements will incur minimal or no additional costs for fuel reformulation to meet the Phase I fuel requirements. In fact, it appears that gasoline sold in New Jersey is now already cleaner-burning than is required for RFG 1 and close to meeting the more stringent standards which the Department is proposing for Phase I of this new fuel program. The

Department believes the standards proposed for the second phase of its new program, to be effective for the ozone season of the year 2003, can also be achieved without significant cost to the regulated community and the end consumer. The Department anticipates that the fuel industry will be able to comply with the Phase I fuel formulation parameters with only a moderate increase in the cost of fuel in the range of $0.00 to $0.01 per gallon. This increased cost is largely attributable to the additional costs resulting from the management and utilization of storage and distribution facilities needed to comply with these new standards which refiners, importers, blenders, and distributors may, in some cases, incur. While the reformulation needed to meet the proposed standards for Phase II may be more costly, the Department will be studying both these costs and the cost effectiveness of these Phase II standards, as is discussed above and at N.J.A.C. 7:27-25.2(d).

Adoption of these standards is, however, expected to improve air quality. The Department has made preliminary estimates regarding the emission reduction benefits expected from this new program, which estimates it will refine in the near future using actual transportation models. The Department estimates that implementation by the State of the VOC emission standard in 1999 would result in emission reduction benefits of 18 to 23 tons per day. This number would decrease somewhat in the following years as the emission reduction benefit would be compared to the VOC emission standards for RFG 2, which are in effect beginning in 2000. The Department estimates that implementation of the Phase I NOx emission standard in 1999 would result in emission reduction benefits of 22 to 24 tons per day. Again, this number would decrease somewhat in the years 2000 through 2002, as the emission reduction benefit would be compared to the NOx emission standards for RFG 2, which are in effect beginning in 2000. The Department estimates that implementation of the Phase II NOx emission standard in 2003 would result in emission reduction benefits of 12 to 13 tons per day.

The Department anticipates that the improved air quality will result in economic benefits by decreasing health costs to the public. Health care costs for air pollution-related illnesses in the United States are estimated to be on the order of $50 billion per year. In addition, the American Lung Association estimates that, nationally, 182 million people face health threats from ground-level ozone alone. By decreasing the public's exposure to ozone, these amendments will lessen these health care costs.

Air pollutants also have a direct adverse effect on vegetation, livestock, and certain materials, such as rubber, and glass. Although economic losses due to air pollution damage in these areas are difficult to quantify (since it is difficult to distinguish between natural deterioration and that which is caused by air pollutants), past estimates have indicated that losses from material damage alone have exceeded $4 billion annually nationwide. Godish, Thad. Air Quality (Chelsea, Michigan: Lewis Publishers, Inc., 1991), p.207. This proposal, by reducing air pollutants, should substantially reduce the adverse economic effects on vegetation, livestock, and other property.

In addition, by complying with Federal air quality standards, the State will be able to avoid the significant adverse economic impact of Federal sanctions.

Implementation of the low emission gasoline program will impact State government resources. The Department anticipates that implementation of the proposed low emission gasoline program will

require staff effort for program oversight and enforcement. Program development and implementation will also require the support of legal services.

The proposed addition of penalties at N.J.A.C. 7:27A-3.10 will facilitate enforcement of the new low emission gasoline requirements. To the extent that these penalties further the goals of the low emission gasoline program, they advance the positive economic impact of the program as a whole, described herein.

Environmental Impact

The implementation of these amendments will have a positive impact on the environment by reducing the emissions of VOCs and NOx, thereby reducing the formation of ground-level ozone. Ground-level ozone's primary impact is upon human health and well-being. These effects are discussed at length in the Social Impact above.

In addition to human health effects, studies have shown that increasing ozone levels damage foliage. One of the earliest and most obvious manifestations of ozone impact on the environment is this type of damage to sensitive plants. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in ambient ozone concentrations will mitigate damage to foliage, fruits, vegetables and grain.

Decreased ozone levels will also reduce the level of the degradation of various man-made materials, such as rubber, plastics, dyes and paints. This degradation is caused by the oxidizing properties of ozone. However, if the photochemical production of ground-level ozone can be limited, as it will be with the implementation of the proposed low emission gasoline rule, this degradation will be significantly reduced.

The proposed addition of penalties at N.J.A.C. 7:27A-3.10 will facilitate enforcement of the proposed low emission gasoline rules. To the extent that these penalties further the goals of the low emission gasoline program, they advance the positive environmental impact of the program as a whole, described herein.

Federal Standards Analysis

Executive Order No. 27 (1994) and P.L. 1995, c. 65, require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The proposed amendments to N.J.A.C. 7:27-25 do exceed Federal standards for gasoline sold in New Jersey in that they provide more stringent standards for VOC and NOx emissions than do the RFG requirements which would otherwise apply. A comparison of these standards in included in the Summary above.

The policy reasons for going beyond the federal fuel formulation requirements set forth in the RFG program and applicable to gasoline sold in New Jersey is also discussed in the Summary. While it is not possible to project a precise estimate of the savings which these measures will afford the State and its residents, an increase of one cent or less per gallon will be more than offset by the economic

benefits of complying with Clean Air Act mandates regarding attainment of the NAAQS for ozone and the actual savings related to reduced health care costs which cleaner air provides, as is discussed in the impact statements, above.

Jobs Impact

The Economic Impact statement above discusses the costs that the Department anticipates will result from the low emission gasoline requirements. Each member of the regulated community will choose its own approach or combination of approaches to defray these costs. Examples of such approaches include decreasing the rate of growth of any of the following: other business expenditures; dividends and other distributions; and compensation to management and other employees. In addition, increased compliance costs could be passed on in the form of higher prices for goods and services sold by regulated companies. Conceivably, the additional costs could cause a regulated entity to decrease the number of its employees. Because each member of the regulated community may defray its increased costs in a different way, it is not possible to estimate accurately the extent, if any, to which these rules will affect employment.

Agriculture Industry Impact

Pursuant to P.L. 1998, c. 48, adopted on July 2, 1998, the Department has evaluated this rulemaking to determine the nature and extent of the proposed new rules' and amendments' impact on the agriculture industry. The proposed provisions regarding the formulation of fuel to be sold in this State will have no impact upon the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules and amendments would apply to any refiner, importer, blender, or distributor who sells or otherwise provides gasoline to one or more distributors, retailers, and/or wholesale purchaser-consumers in New Jersey. The small businesses affected by these new rules and amendments are primarily the independent gasoline distributors who meet the above requirements. The Department estimates that approximately 15 distributors who meet the above requirements are "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

For these small businesses, the additional expense of complying with these proposed new rules and amendments is expected to be small. They would be prohibited from providing gasoline which does not comply with the standards set forth at N.J.A.C. 7:27-25.8 to distributors, retailers, and/or wholesale purchaser-consumers in New Jersey. Because all upstream refiners, importers, blenders and distributors would be prohibited under this program from providing these New Jersey distributors with non-compliant gasoline, these small businesses would not in any way be restricted in their ability to distribute all the gasoline they received. The cost of compliance, therefore, would only be to verify that the gasoline they receive is indeed compliant; that is, the distributor would be obliged to check the paperwork generated in connection with the gasoline received before distributing it further in New Jersey.

Similarly, the recordkeeping requirements which these new rules and amendments would impose on these small businesses are simply that they keep a record of their compliance. The Department expects the cost of this recordkeeping to be de minimis, and again, outweighed by the economic benefits of this program, as described in the Economic Impact, above.

In addition, those small businesses using the open market emission trading program as a compliance alternative to these new low emission gasoline requirements will incur compliance and recordkeeping expenses similar to those experienced by other participants in that program; these are expected to be de minimis.

In developing these proposed new rules and amendments, the Department has balanced the need to protect the environment against the economic impact and has determined that the effect of the rules on small businesses is reasonable. Therefore, no exemption of small businesses from coverage is provided.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets **[**thus**]**):

SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS

7:27-25.1 Definitions

(a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

...

"Control period" means the applicable period each year during which gasoline within a control area is subject to the oxygen content **[**or RVP standards**]** set forth at N.J.A.C. 7:27-25.3.

...

"Gasoline" means any **[**petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater,**]** **fuel** sold for use or used in a motor vehicle or motor vehicle engine, and commonly or commercially known or sold as gasoline.

"Importer" means a person who imports gasoline**, gasoline blending stocks or components** from a foreign country into the United States **(including into the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands)**.

...

"Nonconforming gasoline" means any gasoline **[**the RVP or oxygen content of**]** which does not**,** during the **[**applicable**]** **oxygen program** control period **or the ozone season,** conform with the **applicable** standards set forth in N.J.A.C. 7:27-25.3 **and 25.8, respectively**.

...

"Ozone season" means the portion of each year beginning May 1 and ending September 15.

...

"Refinery" means a facility **[**which carries out refining processes**]** **at which gasoline is produced**.

...

"RFG" or "Federal reformulated gasoline" means any gasoline whose formulation has been certified by the EPA under 40 C.F.R. 80.40, which meets each of the standards and requirements prescribed under 40 C.F.R. 80.41, and which contains less than the maximum concentration of the marker specified in 40 C.F.R. 80.82 that is allowed for reformulated gasoline under 40 C.F.R. 80.82.

"RFG 1" means RFG meeting the Federal standards set forth at 40 C.F.R. 80.41(c) or (d) and (h) and otherwise referred to as Phase I RFG.

"RFG 2" means RFG meeting the Federal standards set forth at 40 C.F.R. 80.41(e) or (f) and (h) and otherwise referred to as Phase II RFG.

...

["RVP control period" means the period from May 1 through and including September 15 of each year during which the RVP standard set forth at N.J.A.C. 7:27-25.3 is applicable to gasoline to be used in New Jersey as vehicular fuel.**]**

...

(b) Words and terms that are used in those portions of 40 C.F.R. Part 80 which are referenced in this subchapter, and are not defined at (a) above, have meanings as defined at 40 C.F.R. 80.2, as amended and supplemented, incorporated herein by reference.

7:27-25.2 Scope and applicability

(a) (No change)

(b) [Any] **Except as provided in (c) below, any** refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer of gasoline for use as motor vehicle fuel in the State is subject to the provisions of this subchapter **as well as the provisions of 40 C.F.R. Part 80.**

(c) The low emission gasoline standards for VOC, NOx, and sulphur set forth at N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g) apply only to a refiner, importer, blender, or distributor who sells or otherwise provides gasoline to one or more distributors, retailers, and/or wholesale purchaser-consumers in New Jersey.

(d) The Phase II low emission gasoline standards at N.J.A.C. 7:27-25.8(d), (f) and (g) shall not be operative until the following actions have been taken:

1. The Department shall investigate the incremental cost relative to the air quality benefits of the standards; and

2. Based on the findings from the investigation conducted pursuant to (d)1 above, consideration of overall environmental benefit, and other factors the Department may deem relevant, the Department shall either:

i. Reaffirm that the standards and the timing of their effective date are appropriate; or

ii. Consider modifying the standards or their effective date. In such case, the Department shall seek public comment and comment from the EPA. After considering the comment received, the Department may modify the standards through rulemaking.

7:27-25.3 [General] Oxygen content standards: general provisions

[(a) Except as provided for in(b) and(h) below, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the RVP control period each year, starting in 1989, gasoline having a RVP greater than 9.0 pounds per square inch.

(b) The following compliance schedule shall be in effect in 1989 only; after 1989, the compliance schedule set out in (a) above shall be in effect:

1. No refiner or importer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period May 1 through September 15, 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

2. No blender or distributor shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period June 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

3. No wholesale purchaser-consumer or retailer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period July 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.**]**

[(c)] **(a)** Except as provided for at N.J.A.C. 7:27- **[**25.9**]** **-25.7**, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in the oxygen program control area **from November 1 through and including the last day of the following February**, unless:

1. The oxygen content of the gasoline equals or exceeds 2.7 percent **[**from November 1 through and including the last day of the following February**]**; and

2. The oxygen content of the gasoline equals or is less than 3.5 percent.

[(d) The standards set forth in (c) above shall become operative on November 1, 1992 or on such delayed effective date as EPA establishes, pursuant to 42 U.S.C. 7545(m)(3)(C), due to a determination that there is or is likely to be, for any control area, an inadequate domestic supply of or distribution capacity for:

1. Oxygenated gasoline that meets the standard set forth in (c) above; or
2. The oxygenates needed to blend into gasoline to make fuel that conforms with (c) above.**]**

[(e)**] (b) (No change in text)**

[(f)**] (c)** Notwithstanding the provisions of **[**(c)**] (a)** above, a refiner, importer, blender, or distributor may provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline which has an oxygen content less than 2.7 percent, provided that:

1. (No change.)

2. Documents associated with the gasoline, including but not limited to any record, invoice, or bill of lading, specify which one of the uses given in **[**(f)1**] (c)1** above applies to the gasoline; and

3. The refiner, importer, blender or distributor ensures that gasoline is provided, sold, stored, transported, imported, or exchanged in trade in accordance with the use specified in **[(**f)2**] (c)2** above.

[(g)] **(d)** (No change in text)

[(h) Wholesale purchaser-consumers and retailers shall be exempt from the RVP standard established in (a) above during the month of May.**]**

7:27-25.4 [Recordkeeping] Oxygen content standards: recordkeeping and compliance determinations

(a) Each refiner, importer, blender or distributor shall:

1. During **[**any applicable**] the oxygen program** control period established pursuant to N.J.A.C. 7:27-25.3, test all gasoline prior to its release from a refinery, import facility, blending facility or distribution facility for use in **[**a**] the oxygen program** control area

[within the State**]** to determine its **[**RVP or**]** oxygen content **[**, as applicable,**]** and for each test prepare a test report which documents the **[**RVP or**]** oxygen content **[**, as applicable,**]** of the gasoline;

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; **[**that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less;**]** that, during the oxygen program control period, the gasoline conforms with the oxygen content requirements of this subchapter; the category of oxygenate, either alcohol or ether blends, being used in the gasoline; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

   i.-ii. (No change.)

3. Maintain records on all gasoline leaving the refinery, import facility, blending facility, or distribution facility, which document **[**the RVP and**]** the oxygen content of gasoline; the category of the oxygenate, either alcohol or ether blends, in the gasoline; shipment quantity; shipment date; and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline, including **[**RVP and**]** the oxygen content of gasoline, the category of the oxygenate, either alcohol or ether blends, in the gasoline; delivery quantity; date of delivery; and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading and other transfer documents, invoice delivery tickets and loading tickets, and invoices and test reports certified pursuant to (a)2 above.

(c) Any sampling of gasoline **for determining the oxygen content of gasoline** required pursuant to the provisions of this subchapter shall be conducted in accordance with the following methods:

[1. For determining the RVP of gasoline:

   i. For manual sampling: ASTM D4057; or

   ii. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987); and

2. For determining the oxygen content of gasoline:**]**

[i.**]** **1.** The methods set forth at 40 CFR 80, Appendix D; or

[ii.**]** **2.** Any other method approved in writing in advance by the Department and EPA.

[(d) All testing for RVP required pursuant to the provisions of this subchapter shall be conducted using one of the following methods:

1. "Method 1 - Dry RVP Measurement Method" promulgated at 40 CFR 80, Appendix E;

2. "Method 2 - Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E;

3. "Method 3 - Grabner Method" promulgated at 40 CFR 80, Appendix E; or

4. Any other equivalent test method approved in advance in writing by the Department and EPA.**]**

(e) Any determination of the oxygen content of any sample of gasoline required pursuant to the provisions of this subchapter shall be conducted as follows:

1. - 2. (No change.)

3. The mass concentration of the oxygen-containing components of each oxygenate in the gasoline shall be obtained by multiplying the concentration of each oxygenate in the gasoline, determined in **[**(e)1**] (d)1** above, by the following ratio: the specific gravity (or density) given for the oxygenate in Table 1 below to the specific gravity (or density) of the oxygenate blend, determined in **[**(e)2ii**] (d)2ii** above;

4. The contribution of the oxygenate to the oxygen content of the gasoline, in percent by weight, shall be determined by multiplying the mass concentration of the oxygenate in the gasoline determined in **[**(e)3**] (d)3** above by the oxygen molecular weight fraction of the oxygenate, obtained from Table 1 below; and

5. (No change.)

[(f)**] (e)** In order to provide allowance for test method variation, the Department shall consider any gasoline which is tested using ASTM D4815, pursuant to **[**(e)1i**] (d)1i** above, to comply with the standards of N.J.A.C. 7:27-25.3 if its oxygen content, calculated pursuant to **[**(e)**] (d)** above, is within 10 percent of the standard.

TABLE 1 ***(No change.)***

[(g)**] (f)** **(No change in text)**

[(h)**] (g)** Notwithstanding the requirements in this section for testing to determine the oxygen content of gasoline, a refiner, importer, blender or distributor may apply to the Department for approval to use an alternative method of determining the oxygen content of gasoline. The application shall be certified in accordance with N.J.A.C.

7:27- **[**8.24**]** **1.39**. The Department shall not approve such an application unless the alternative method proposed would ensure that the oxygen content of the fuel would be determined with no less accuracy and reliability than would be achieved through testing in accordance with this section.

[7:27-25.6 Petition for rulemaking in the case of imminent supply shortage

If at any time a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer comes to the conclusion that the requirement of supplying 9.0 psi RVP gasoline during the control period May 1 through September 15 will cause an imminent shortage of gasoline such that supply cannot meet demand, such party shall file a petition for rulemaking with the Department pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, requesting that the Department modify the 9.0 psi RVP standard such that a shortage in gasoline supply will be averted. This petition may request that the Department pursue emergency rulemaking pursuant to N.J.S.A. 54:14B-4.4 and N.J.A.C. 1:30-4.5.

7:27-25.7 Exemptions

(a) The Department may, at its discretion, issue an exemption allowing any person to store, transfer, or use non-conforming gasoline, provided the gasoline is used solely for the purpose of research, product development, and trial use.

(b) Application for an exemption shall be made on forms obtained from the Department. Any person may request application forms from:

Assistant Director of Air and Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection and Energy
CN 422
Trenton, New Jersey 08625-0422

(c) The Department may require an applicant for an exemption to submit such details about the intended use of the non-conforming gasoline as it considers necessary to evaluate the potential effect of such use on public health, welfare and the environment. Such information shall include, but is not limited to:

1. Specification of how the non-conforming gasoline is to be used, and the purpose of this use;

2. Explanation of why the purpose could not be accomplished through use of gasoline whose volatility conforms with the N.J.A.C. 7:27-25.3 standards;

3. For any year, the maximum number of gallons and maximum RVP of non-conforming gasoline:

i. To be used from May 1 through September 15; and

ii. To be stored at the facility during the May 1 through September 15 period;

4. A calculation of the maximum potential additional VOC emissions that could occur during the May 1 through September 15 period in any year due to the storage, transfer, and use of non-conforming gasoline; and

5. A facility diagram specifying the tanks in which non-conforming gasoline will be stored.

(d) The Department may require, as a condition of approval of an exemption, the use of control apparatus.

(e) No applicant may commence storing, transferring, and using non-conforming gasoline prior to the issuance by the Department of a written approval of an exemption.

(f) Any exemption issued by the Department pursuant to this section shall be valid for a period of no longer than three years from the date of approval.

(g) Any person holding an exemption issued by the Department pursuant to this section shall make said exemption readily available for inspection on the operating premises.

(h) Any person to whom the Department has issued an exemption pursuant to this section shall:

1. Record each day between May 1 and September 15 the quantity, in gallons, of non-conforming gasoline which is:

i. Stored at the facility; and

ii. Consumed that day in research, product development, or trial use:

2. Maintain the records kept pursuant to (h)1 above at the facility for a period no less than three years;

3. Make the records kept pursuant to (h)1 above available, upon request, for review by the Department; and

4. Upon the request of the Department, submit to the Department all or any part of the information contained in the records kept pursuant to (h)1 above.

(i) The Department shall deny an application for an exemption if:

1. The Department determines that such storage, transfer, or use of gasoline may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the person has exclusive use or occupancy;

2. The applicant fails to demonstrate, to the satisfaction of the Department, that the proposed storage, transfer, and use of non-conforming gasoline are essential to the intended research, development, or trial use set forth in the application.

(j) The Department may deny an application for an exemption if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(k) The Department may revoke any approval of any exemption granted pursuant to this section if the Department determines that the person to whom the Department has issued the exemption has:

1. Stored, transferred, or used non-conforming gasoline for any purpose other than that described in the application for an exemption and approved by the Department;

2. Failed to allow lawful entry by authorized representatives of the Department to the facility for which the exemption is issued;

3. Failed to pay any penalty assessed pursuant to a final order issued by the Department; or

4. Failed to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-25.8 within 60 days after receipt of a fee invoice.

(l) If the Department seeks to revoke an exemption during the term of that exemption, the Department shall provide the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**]**

7:27- [25.8 Labeling] <u>25.6</u> <u>Oxygen content standards: labeling</u>

(a) - (d) (No change.)

7:27- [25.9 Variance] **25.7 Oxygen content standards: Variance** for shortage of supply

(a) - (n) (No change.)

7:27-25.8 Low emission gasoline standards: general provisions

(a) This section establishes requirements pertaining only to VOC and NOx emissions from gasoline.

(b) The persons to whom this section applies are refiners, importers, blenders, and distributors, who provide gasoline to one or more distributors, retailers and/or wholesale purchaser-consumers in New Jersey.

(c) No person subject to this section shall, during the ozone seasons of 1999, 2000, 2001 and 2002, inclusive, provide gasoline to a distributor, retailer or wholesale purchaser-consumer in New Jersey unless the gasoline meets, on a per-gallon basis, one of the following VOC standards:

1. A VOC emission performance reduction standard of 28.4 percent from baseline gasoline as described at 40 C.F.R. 80.45; or

2. An RVP standard of no more than 7.5 pounds per square inch (psi); provided that the VOC emission performance reduction of the gasoline is at least as great as the average VOC emission performance reduction of the gasoline which this person provided to one or more distributors, retailers and/or wholesale purchaser-consumers in New Jersey during the 1998 ozone season.

(d) No person subject to this section shall, during the ozone season of 2003 and every ozone season thereafter, provide gasoline to a distributor, retailer or wholesale purchaser-consumer in New Jersey unless the gasoline meets, on a per-gallon basis, a VOC emission performance reduction standard of 28.4 percent from baseline gasoline as described at 40 C.F.R. 80.45.

(e) No person subject to this section shall, during the ozone seasons of 1999, 2000, 2001 and 2002, inclusive, provide gasoline to a distributor, retailer or wholesale purchaser-consumer in New Jersey unless the gasoline meets, on a per-gallon basis, a NOx emission performance reduction standard of 8.6 percent from baseline gasoline as described at 40 C.F.R. 80.45.

(f) No person subject to this section shall, during the ozone season of 2003 and every ozone season thereafter, provide gasoline to a distributor, retailer or wholesale purchaser-consumer in New Jersey unless the gasoline meets, on a per-gallon basis, a

NOx emission performance reduction standard of 11.0 percent from baseline gasoline as described at 40 C.F.R. 80.45.

(g) No person subject to this section shall, during the ozone season of 2003 and every ozone season thereafter, provide gasoline to a distributor, retailer or wholesale purchaser-consumer in New Jersey unless the gasoline meets, on a per-gallon basis, a sulphur cap of 80 parts per million (ppm).

7:27-25.9 Low emission gasoline standards: recordkeeping and compliance determinations

(a) Any importer, refiner, or blender shall, in regards to all gasoline subject to the requirements set forth at N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g), above:

1. Comply with the recordkeeping requirements set forth at 40 C.F.R. 80.74, incorporated herein, with all subsequent amendments thereto, by reference;

2. Deliver to the Department or its authorized representative, upon request, copies of all records containing the information required in 40 C.F.R. 80.74;

3. Report as specified in 40 C.F.R. 80.75 and submit to the Department, by the last day of February following each calendar year for which N.J.A.C. 7:27-25.8 continues in effect, a copy of the reports and statements required pursuant to 40 C.F.R. 80.75(l);

4. Conduct a program of compliance surveys as specified in 40 C.F.R. 80.68 and ensure that copies of all surveys are submitted to the Department at such time as these surveys are submitted to the EPA; and

5. Upon the request of the Department, report any other information as the Department may require.

(b) Any distributor shall, in regards to all gasoline subject to the requirements set forth at N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g) above, maintain records to show compliance with said requirements.

(c) Compliance with the VOC and NOx emission performance reduction standards in N.J.A.C. 7:27-25.8(c), (d), (e) and (f) above shall be determined using the RFG Complex Model set forth at 40 C.F.R. 80.45.

(d) Compliance with the RVP standard in N.J.A.C. 7:27-25.8(c)2 above shall be determined in accordance with the following:

1. Any sampling of gasoline for determining the RVP of gasoline required pursuant to the provisions of this subchapter shall be conducted in accordance with the following methods, incorporated herein by reference:

i. For manual sampling: ASTM D4057; or

ii. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987); and

2. Any testing of gasoline conducted for the purpose of determining its RVP shall be done in accordance with the following methods, incorporated herein by reference:

i. "Method 3 - Grabner Method" promulgated at 40 CFR 80, Appendix E; or

ii. Any other equivalent test method approved in advance in writing by the Department and the EPA.

(e) Any reports or information required or requested under this section shall be submitted to the Department at the following address:

New Jersey Department of Environmental Protection
Bureau of Transportation Control
P.O. Box 437
380 Scotch Rd.
Trenton, N.J. 08625-0437

7:27-25.10 Low emission gasoline standards: use of credits for compliance

(a) Any person subject to the VOC and NOx emission standards for gasoline set forth in N.J.A.C. 7:27-25.8(c), (d), (e) and (f), may use discrete emission reduction (DER) credits, in full or in part, to comply with the standard, provided that the generation of the DER credits and the use of the DER credits are carried out in accordance with N.J.A.C. 7:27-30, Open Market Emissions Trading, except as specifically modified by this section.

(b) A person using credits for compliance pursuant to this section shall timely submit a Notice of Intent to Use DER Credits as prescribed at N.J.A.C. 7:27-30.14 prior to using credits. If the Notice is submitted late, the credit user shall be subject to the surcharge for late submittals set forth at N.J.A.C. 7:27-30.11(e). Further, as provided at N.J.A.C. 7:27-30.11(e), the use period shall not begin before the Notice is filed.

(c) In preparing the Notice of Intent to Use DER Credits, the credit user shall ensure that the Notice requirements at N.J.A.C. 7:27-30.14, 30.16 and 30.20 are met, except that such a Notice submitted for the purpose of complying with a low emission gasoline standard set forth in N.J.A.C. 7:27-25.8(c), (d), (e) and (f) is subject to the conditions and exemptions given in (d) through (j) below.

(d) A Notice of Intent to Use DER Credits submitted pursuant to this section is exempt from N.J.A.C. 7:27-30.14(b)2 and 3 and N.J.A.C. 30.16(c)4, 5, 6, 7 and 8, which require a credit user to give information about the credits to be used and about the quantification of the number of the credits that will be needed. Instead the credit user shall provide in the Notice an estimate of the maximum number of DER credits to be used during the use period. If the credit user determines later that more credits than this maximum number will be needed during the use period, the credit user shall amend the estimate in the Notice, in accordance with N.J.A.C. 7:27-30.14(c), prior to the date the maximum number is exceeded. If the credit user does not submit this amendment at least 30 days before the maximum number is exceeded, the surcharge for late submittals set forth at N.J.A.C. 7:27-30.11(e) shall apply.

(e) In the Notice of Intent to Use DER Credits, in establishing the use period required by N.J.A.C. 7:27-30.16(c)2, the final date of the use period shall be December 31.

(f) Included with the Notice of Intent to Use DER Credits, as required at N.J.A.C. 7:27-30.16(c)3, shall be the emission quantification protocol to be used to calculate the number of credits that are needed for compliance. This protocol shall satisfy the requirements of N.J.A.C. 7:27-30.20, except that notwithstanding the provisions at N.J.A.C. 7:27-30.20(g):

1. If the Department publishes in the New Jersey Register an applicable emissions quantification protocol, the included protocol may be that protocol; or

2. The included protocol may be an alternate emission quantification protocol proposed by the credit user and approved by the Department.

(g) Notwithstanding the requirements at N.J.A.C. 7:27-30.11(f), a credit user need not hold the DERs needed for compliance until the date the Notice and Certification of DER Use is submitted, pursuant to N.J.A.C. 7:27-30.15(a).

(h) Any DER credits used to satisfy the conditions of N.J.A.C. 7:27-25.8(c), (d), (e) or (f) shall be based on emission reductions that occurred during the 1998 or later ozone seasons.

(i) Pursuant to N.J.A.C. 7:27-30.15(a), a Notice and Certification of DER Use submitted under this section is due 30 days after December 31 (that is, by January 30 of the following calendar year).

(j) In the Notice and Certification of DER Use, the person using credits shall provide the information required at N.J.A.C. 7:27-30.15 and 30.16, and the following:

1. The quantity of VOC or NOx DER credits determined, pursuant to the emissions quantification protocol submitted with the Notice of Intent to Use DER Credits, to be needed for compliance;

2. All supporting information required by the emission quantification protocol used, and all supporting information required under N.J.A.C. 7:27-30.20;

3. The quantity of VOC or NOx DER credits that the user has acquired for use for compliance;

4. For each DER credit being used, the place where the DER credit was generated, and the date on which the DER credit was generated or acquired by the user;

5. The unique serial number assigned under N.J.A.C. 7:27-30.8(c) to each DER being used;

6. If the use of DER credits, compared with other methods of complying, resulted in an increase in emissions of any HAP, the amount of such increase of that HAP;

7. A statement that the quantity of DER credits determined to be needed for use was calculated in accordance with an emission quantification protocol that meets the requirements of N.J.A.C. 7:27-30.12 and 30.20 and that has been approved by the Department; and

8. A statement attesting that all documentation and supporting information required by the emission quantification protocol or by N.J.A.C. 7:27-30.20 is enclosed.

[7:27-25.10] 7:27-25.11 (No change in text.)

7:27-[25.11 Service] 25.12 Oxygen content standards: service fees

[(a) Any person who applies for an exemption pursuant to N.J.A.C. 7:27-25.7 shall submit with the application, as an integral part thereof, a non-refundable service fee of $500.00.

(b) Any person to whom the Department has issued an exemption pursuant to N.J.A.C. 7:27-25.7 shall remit to the Department within 60 days after receipt of an invoice, an annual compliance inspection fee of $500.00 for each year that the exemption remains in effect.**]**

[(c)**] (a)** Any person who applies for a variance pursuant to N.J.A.C. 7:27-**[**25.9**] 25.7** shall submit with the application a non-refundable service fee of $500.00. No application shall be deemed complete without the required fee.

[(d)**] (b)** Any person to whom the Department has issued a variance pursuant to N.J.A.C. 7:27-**[**25.9**] 25.7** shall remit to the Department within 60 days after receipt of an invoice, a compliance inspection fee of $200.00. Such person is subject to a compliance inspection fee only if the Department conducts at the facility one or more compliance inspections pursuant to the variance during any year, or part thereof, that the variance is in effect. The Department shall not charge such person a compliance inspection fee more frequently than once per year.

SUBCHAPTER 30. OPEN MARKET EMISSIONS TRADING

7:27-30.13 DER use: required, authorized and prohibited uses

(a) (No change.)

(b) A person may use DERs to comply with an emission limit established under this chapter, unless the use is prohibited by Federal or State law or is listed under (d) below. Examples of authorized DER uses include:

1. - 3. (No change.)

4. Compliance with emission offset requirements under N.J.A.C. 7:27-18, in accordance with (c) below; **[**and**]**

5. Compliance with requirements, if any, for emission reductions in connection with the employer trip reduction program administered under N.J.A.C. 16:50, if consistent with rules promulgated by the State Department of Transportation. However, DERs may not be used in lieu of submitting the compliance plan required under N.J.A.C. 16:50**; and**

6. Compliance with the low emission gasoline standards set forth at N.J.A.C. 7:27-25.8(c), (d), (e), and (f), provided that the provisions set forth at N.J.A.C. 7:27-25.10 are met.

(c) (No change.)

(d) The owner or operator of an emissions source may not use DERs for any of the following purposes:

1.-4. (No change.)

5. To comply with requirements for reformulated gasoline under 42 U.S.C. § 7545(k), or for Reid vapor pressure under 42 U.S.C. § 7545(h) **[**and (i) and N.J.A.C. 7:27-25**]**;

6. - 7. (No change.)

(e) (No change.)

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) - (l) (No change.)

(m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are as set forth in the following civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1. - 24. (No change.)

25. The violations of N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels, and the civil administrative penalty amounts for each violation, are as set forth in the following table:

Citation	**Class**	**First Offense**	**Second Offense**	**Third Offense**	**Fourth and Each Subsequent Offense**
[N.J.A.C. 7:27-25.3(a)	Less than 15,000 gallon tank capacity	$2,000	$4,000	$10,000	$30,000
	From 15,000 up to 50,000 gallon tank capacity.	$4,000	$8,000 $16,000	$20,000	$50,000
	From 50,000 up to 500,00 gallon tank capacity.	$8,000		$40,000	$50,000
	Greater than 500,000 gallon tank capacity.	$10,000	$20,000	$50,000	$50,000

Citation	**Class**	**First Offense**	**Second Offense**	**Third Offense**	**Fourth and Each Subsequent Offense**
N.J.A.C. 7:27-25.3(b)	Less than 15,000 gallon tank capacity. From 15,000 up to 50,000 gallon tank capacity. From 50,000 up to 500,000 gallon tank capacity. Greater than 500,000 gallon tank capacity.	$2,000 $4,000 $8,000 $10,000	$4,000 $8,000 $16,000 $20,000	$10,000 $20,000 $40,000 $50,000	$30,000 $50,000 $50,000 $50,000 **]**
N.J.A.C. 7:27-[25.3(c)] **25.3(a)**	Less than 15,000 gallon tank capacity. From 15,000 up to 50,000 gallon tank capacity. From 50,000 up to 500,000 gallon tank capacity. Greater than 500,000 gallon tank capacity.	$2,000 $4,000 $8,000 $10,000	$4,000 $8,000 $16,000 $20,000	$10,000 $20,000 $40,000 $50,000	$30,000 $50,000 $50,000 $50,000
...	...	...	...	...	...
[N.J.A.C. 7:27-25.7(g)	Readily Available	$100	$200	500	$1,500
N.J.A.C. 7:27-25.7(h)1-2	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-25.7(h)3	Readily Available	$100	$200	$500	$1,500
N.J.A.C. 7:27-25.7(h)4	Submittal	$300	$600	$1,500	$4,500**]**
N.J.A.C. 7:27-[25.8] **25.6**	Labeling (per pump)	$100	$200	$500	$1,500
N.J.A.C. 7:27-[25.9(i)] **25.7(i)**	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-[25.9(k)2] **25.7(k)2**	Readily Available	$100	$200	$500	$1,500
N.J.A.C. 7:27-[25.9(*l*)1] **25.7(*l*)1**	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-[25.9(*l*)2] **25.7(*l*)2**	Reports	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-[25.9(*l*)3] **25.7(*l*)3**	Non-conforming gasoline and economic benefit	$0.5 per gallon [1]			
N.J.A.C. 7:27-[25.9(*l*)4] **25.7(*l*)4**	All	$100	$200	$500	$1,500
N.J.A.C. 7:27-[25.9(*l*)5] **25.7(*l*)5**	Submittal	$300	$600	$1,500	$4,500

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-25.8(c), (d), (e), (f) and (g)	Less than 15,000 gallon tank capacity	$2,000	$4,000	$10,000	$30,000
	From 15,000 up to 50,000 gallon tank capacity.	$4,000	$8,000	$20,000	$50,000
	From 50,000 up to 500,00 gallon tank capacity.	$8,000	$16,000	$40,000	$50,000
	Greater than 500,000 gallon tank capacity.	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-25.9(a)2	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-25.9(a)3	Reports	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-25.9(a)4	Surveys	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-25.9(a)5	Reports	$500	$1,000	$2,500	$7,500

[1]To determine the penalty due, multiply the per-gallon penalty amount by gasoline sold.

26. - 31. (No change.)

(n) - (p) (No change.)